

House Bill 593

By: Representatives Hill of the 21st, McCall of the 30th, and England of the 108th

A BILL TO BE ENTITLED
AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to change certain provisions regarding bona fide conservation use property with respect to agritourism; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Code Section 48-5-7.4, relating to bona fide conservation use property, by revising subsections (a), (b), and (p) as follows:

"(a) For purposes of this article, the term 'bona fide conservation use property' means property described in and meeting the requirements of paragraph (1) or (2) of this subsection, as follows:

(1) Not more than 2,000 acres of tangible real property of a single owner, the primary purpose of which is any good faith production, including but not limited to subsistence farming or commercial production, from or on the land of agricultural products or timber, subject to the following qualifications:

(A) Such property includes the value of tangible property permanently affixed to the real property which is directly connected to such owner's production of agricultural products or timber and which is devoted to the storage and processing of such agricultural products or timber from or on such real property;

(B) Such property excludes the entire value of any residence located on the property;

(C) Except as otherwise provided in division (vii) of this subparagraph, such property must be owned by:

(i) One or more natural or naturalized citizens;

(ii) An estate of which the devisees or heirs are one or more natural or naturalized citizens;

- (iii) A trust of which the beneficiaries are one or more natural or naturalized citizens;
- (iv) A family owned farm entity, such as a family corporation, a family partnership, a family general partnership, a family limited partnership, a family limited corporation, or a family limited liability company, all of the interest of which is owned by one or more natural or naturalized citizens related to each other by blood or marriage within the fourth degree of civil reckoning, except that, solely with respect to a family limited partnership, a corporation, limited partnership, limited corporation, or limited liability company may serve as a general partner of the family limited partnership and hold no more than a 5 percent interest in such family limited partnership, an estate of which the devisees or heirs are one or more natural or naturalized citizens, or a trust of which the beneficiaries are one or more natural or naturalized citizens and which family owned farm entity derived 80 percent or more of its gross income from bona fide conservation uses, including earnings on investments directly related to past or future bona fide conservation uses, within this state within the year immediately preceding the year in which eligibility is sought; provided, however, that in the case of a newly formed family farm entity, an estimate of the income of such entity may be used to determine its eligibility: and in the case of an entity engaged in agritourism, as that term is defined by paragraph (7) of subsection (p) of this Code section, the 80 percent requirement may be modified in accordance with paragraph (6) of subsection (b) of this Code section;
- (v) A bona fide nonprofit conservation organization designated under Section 501(c)(3) of the Internal Revenue Code;
- (vi) A bona fide club organized for pleasure, recreation, and other nonprofitable purposes pursuant to Section 501(c)(7) of the Internal Revenue Code; or
- (vii) In the case of constructed storm-water wetlands, any person may own such property;
- (D) Factors which may be considered in determining if such property is qualified may include, but not be limited to:
- (i) The nature of the terrain;
- (ii) The density of the marketable product on the land;
- (iii) The past usage of the land;
- (iv) The economic merchantability of the agricultural product; and
- (v) The utilization or nonutilization of recognized care, cultivation, harvesting, and like practices applicable to the product involved and any implemented plans thereof; and
- (E) Such property shall, if otherwise qualified, include, but not be limited to, property used for:

- 1 (i) Raising, harvesting, or storing crops;
2 (ii) Feeding, breeding, or managing livestock or poultry;
3 (iii) Producing plants, trees, fowl, or animals, including without limitation the
4 production of fish or wildlife by maintaining not less than ten acres of wildlife habitat
5 either in its natural state or under management, which shall be deemed a type of
6 agriculture; provided, however, that no form of commercial fishing or fish production
7 shall be considered a type of agriculture; or
8 (iv) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock,
9 poultry, and apiarian products; or

10 (2) Not more than 2,000 acres of tangible real property, excluding the value of any
11 improvements thereon, of a single owner of the types of environmentally sensitive
12 property specified in this paragraph and certified as such by the Department of Natural
13 Resources, if the primary use of such property is its maintenance in its natural condition
14 or controlling or abating pollution of surface or ground waters of this state by storm-water
15 runoff or otherwise enhancing the water quality of surface or ground waters of this state
16 and if such owner meets the qualifications of subparagraph (C) of paragraph (1) of this
17 subsection:

18 (A) Environmentally sensitive areas, including any otherwise qualified land area 1,000
19 feet or more above the lowest elevation of the county in which such area is located that
20 has a percentage slope, which is the difference in elevation between two points 500 feet
21 apart on the earth divided by the horizontal distance between those two points, of 25
22 percent or greater and shall include the crests, summits, and ridge tops which lie at
23 elevations higher than any such area;

24 (B) Wetland areas that are determined by the United States Army Corps of Engineers
25 to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean
26 Water Act, as amended, or wetland areas that are depicted or delineated on maps
27 compiled by the Department of Natural Resources or the United States Fish and
28 Wildlife Service pursuant to its National Wetlands Inventory Program;

29 (C) Significant ground-water recharge areas as identified on maps or data compiled by
30 the Department of Natural Resources;

31 (D) Undeveloped barrier islands or portions thereof as provided for in the federal
32 Coastal Barrier Resources Act, as amended;

33 (E) Habitats as certified by the Department of Natural Resources as containing species
34 that have been listed as either endangered or threatened under the federal Endangered
35 Species Act of 1973, as amended;

36 (F) River or stream corridors or buffers which shall be defined as those undeveloped
37 lands which are:

1 (i) Adjacent to rivers and perennial streams that are within the 100 year flood plain
2 as depicted on official maps prepared by the Federal Emergency Management
3 Agency; or

4 (ii) Within buffer zones adjacent to rivers or perennial streams, which buffer zones
5 are established by law or local ordinance and within which land-disturbing activity
6 is prohibited; or

7 (G)(i) Constructed storm-water wetlands of the free-water surface type certified by
8 the Department of Natural Resources under subsection (k) of Code Section 12-2-4 and
9 approved for such use by the local governing authority.

10 (ii) No property shall maintain its eligibility for current use assessment as a bona fide
11 conservation use property as defined in this subparagraph unless the owner of such
12 property files an annual inspection report from a licensed professional engineer
13 certifying that as of the date of such report the property is being maintained in a
14 proper state of repair so as to accomplish the objectives for which it was designed.
15 Such inspection report and certification shall be filed with the county board of tax
16 assessors on or before the last day for filing ad valorem tax returns in the county for
17 each tax year for which such assessment is sought."

18 "(b) Except in the case of the underlying portion of a tract of real property on which is
19 actually located a constructed storm-water wetlands, the following additional rules shall
20 apply to the qualification of conservation use property for current use assessment:

21 (1) When one-half or more of the area of a single tract of real property is used for a
22 qualifying purpose, then such tract shall be considered as used for such qualifying
23 purpose unless some other type of business is being operated on the unused portion;
24 provided, however, that such unused portion must be minimally managed so that it does
25 not contribute significantly to erosion or other environmental or conservation problems.
26 The lease of hunting rights or the use of the property for hunting purposes shall not
27 constitute another type of business. The charging of admission for use of the property for
28 fishing purposes shall not constitute another type of business;

29 (2) The owner of a tract, lot, or parcel of land totaling less than ten acres shall be
30 required by the tax assessor to submit additional relevant records regarding proof of bona
31 fide conservation use;

32 (3) No property shall qualify as bona fide conservation use property if such current use
33 assessment would result in any person who has a beneficial interest in such property,
34 including any interest in the nature of stock ownership, receiving in any tax year any
35 benefit of current use assessment as to more than 2,000 acres. If any taxpayer has any
36 beneficial interest in more than 2,000 acres of tangible real property which is devoted to

1 bona fide conservation uses, such taxpayer shall apply for current use assessment only
2 as to 2,000 acres of such land;

3 (4) No property shall qualify as bona fide conservation use property if it is leased to a
4 person or entity which would not be entitled to conservation use assessment;

5 (5) No property shall qualify as bona fide conservation use property if such property is
6 at the time of application for current use assessment subject to a restrictive covenant
7 which prohibits the use of the property for any purpose described in subparagraph
8 (a)(1)(E) of this Code section; and

9 (6) No otherwise qualified property shall be denied current use assessment on the
10 grounds that no soil map is available for the county in which such property is located;
11 provided, however, that if no soil map is available for the county in which such property
12 is located, the owner making an application for current use assessment shall provide the
13 board of tax assessors with a certified soil survey of the subject property unless another
14 method for determining the soil type of the subject property is authorized in writing by
15 such board. Property that is used for agritourism purposes, and that derives more than
16 20 percent of income from agritourism activity, shall be taxed on a pro rata basis in
17 proportion to the amount of income that is derived from such activity upon annual
18 verification by the county board of tax assessors."

19 "(p) The following shall not constitute a breach of a covenant:

20 (1) Mineral exploration of the property subject to the covenant or the leasing of the
21 property subject to the covenant for purposes of mineral exploration if the primary use
22 of the property continues to be the good faith production from or on the land of
23 agricultural products;

24 (2) Allowing all or part of the property subject to the covenant to lie fallow or idle for
25 purposes of any land conservation program, for purposes of any federal agricultural
26 assistance program, or for other agricultural management purposes;

27 (3) Allowing all or part of the property subject to the covenant to lie fallow or idle due
28 to economic or financial hardship if the owner notifies the board of tax assessors on or
29 before the last day for filing a tax return in the county where the land lying fallow or idle
30 is located and if such owner does not allow the land to lie fallow or idle for more than
31 two years of any five-year period;

32 (4)(A) Any property which is subject to a covenant for bona fide conservation use
33 being transferred to a place of religious worship or burial or an institution of purely
34 public charity if such place or institution is qualified to receive the exemption from ad
35 valorem taxation provided for under subsection (a) of Code Section 48-5-41. No
36 person shall be entitled to transfer more than 25 acres of such person's property in the
37 aggregate under this paragraph.

(B) Any property transferred under subparagraph (A) of this paragraph shall not be used by the transferee for any purpose other than for a purpose which would entitle such property to the applicable exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration of the term of the covenant period. Any such use or transfer shall constitute a breach of the covenant;

(5) Leasing a portion of the property subject to the covenant, but in no event more than six acres, for the purpose of placing thereon a cellular telephone transmission tower. Any such portion of such property shall cease to be subject to the covenant as of the date of execution of such lease and shall be subject to ad valorem taxation at fair market value;

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(6) Allowing all or part of the property subject to the covenant on which a corn crop is grown to be used for the purpose of constructing and operating a maze so long as the remainder of such corn crop is harvested; or

(7) Allowing all or part of the property subject to the covenant to be used for agritourism purposes. For purposes of this Code section, the term 'agritourism' means activity that allows members of the public, for recreational, entertainment, or education purposes, to use, view, or enjoy agricultural property, machinery, resources, goods, domesticated and wild animals, history, or culture. An activity is an agritourism activity whether or not the participant paid to participate in the activity."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.